UNITED STATES OF AMERICA BEFORE
THE NATIONAL LABOR RELATIONS BOARD

In the matter of United Government Security Officers of America International and its Local 217, Respondents, and Albert Frazier, an individual, Charging Party	Case No. 04-CB-202803

BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF THE UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA AND ITS LOCAL 217

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I. INTRODUCTION

United Government Security Officers of America International Union ("International") and United Government Security Officers of America, Local 217 ("Local 217") (collectively, "Respondents," "UGSOA," or the "Union")[1] and Allied Universal ("Allied" or "Employer") were parties to an April 1, 2014 to April 30, 2017 collective bargaining agreement (Joint Exhibit 1) covering a bargaining unit of protective security officers ("PSOs") employed at approximately thirty buildings or "sites" throughout the Philadelphia metropolitan area pursuant to a contract with the Federal Protective Service ("FPS"). On or about November 29, 2017, Region 4 of the National Labor Relations Board ("NLRB" or "Board") issued a complaint alleging that Respondents threatened to disaffiliate from and had, since April 26, 2017, "disaffiliated" from, and refused to represent, employees assigned to the Veteran Affairs ("VA"), Social Security Administration ("SSA"), and Internal Revenue Services ("IRS") sites because PSOs in that portion of the unit engaged in activities in opposition to Respondents' leadership in violation of Section 8(b)(1)(A) of the National Labor Relations Act ("NLRA" or "the Act").

A hearing was held before Administrative Law Judge Michael A. Rosas, Esq. on December 3, 2018. On January 22, 2019, Judge Rosas issued his decision ("ALJ Decision") finding that Respondents violated Section 8(b)(1)(A) of

[1] Beginning in late 2015, James Natale, East Coast Regional Director for the International, assisted Local 217 with contract negotiations and grievance handling. (Natale, 103). At times material, Michael Coston was President of Local 217 while Berle Taylor served as Local 217's Vice President. (Markert, 23-24).

the Act (1) by threatening to disaffiliate and cease to represent PSOs employed at the VA, SSA, and IRS sites because a member complained about Respondents' leadership on March 31, 2017 and (2) by disaffiliating from and refusing to represent PSOs at the VA, SSA, and IRS sites because they made concerted complaints about Respondents.

Based thereon, and pursuant to 29 C.F.R. § 102.46(a), Respondents submit this brief in support of their Exceptions to the ALJ's finding that Respondents violated Section 8(b)(1)(A) as described above.

II. FACTUAL BACKGROUND

PSOs within the Local 217 bargaining unit received certain benefits through a health and welfare plan sponsored by the International. UGSOA retained BSI, a third party administrator, to manage the health and welfare contributions and benefits for Local 217. (ALJ Decision, 6). Through BSI, the International had an agreement with Boon Group to provide health insurance while Pentegra ran the plan's 401(k) retirement plan. (Natale, 106). As of 2017, PSOS received health and welfare contributions from the Employer to purchase health insurance coverage with the remainder of the money credited to PSOs' 401(k) accounts. (Markert, 20).

The Employers[2] holding the security contract with FPS have frequently contracted out security services at sites, including the VA and SSA sites, to subcontractors including Trident Security, Butler Security and Greenlee

[2] C&D Security initially held the contract with FPS and was the employer of the PSOs. Subsequently, Allied Barton, which later changed its name to Allied Universal, ("Allied" or "Employer") purchased C&D Security.

Security. (Markert, 19). The number of subcontractors made it difficult to track health and welfare contributions for PSOs working for subcontractors. (Frazier, 62-63).

Andrea Markert, a PSO at the VA site, filed grievances, contacted Local 217, the International, BSI, Boon Group, Aetna, and Pentegra to resolve issues related to health and welfare benefits caused by subcontractors. (Markert, 21-22). Markert regularly attended Local 217 meetings and raised issues regarding health and welfare benefits at those meetings. (Markert, 30). Additionally, Markert volunteered to be on the Local 217 negotiating team where her participation was welcomed. (Markert, 36-37). Albert Frazier, shop steward for the VA and SSA sites since 2015 (Frazier, 52-54), and Rashid Goins, a de facto steward,[3] also raised concerns related to health and welfare benefits, including unpaid medical bills and 401(k) contributions, to the Local. (Frazier, 55-57).

In 2016 and 2017, Goins submitted unpaid medical bills for two PSOs to UGSOA and BSI. When BSI notified Goins that the bills were being paid, Goins provided no evidence to the contrary. (Goins, 90-91). Nonetheless, in August 2016, Goins emailed Natale and Jeffrey Miller, the International's CSO Vice President, writing, in part,

> 1. We all have paystubs where it shows funds being redistributed to our health and welfare. You don't need proof from me, you already have it.

[3] Goins acted as a shop steward because one was not available at his sites. (Goins, 79-80, 86). Markert identified Frazier and Goins as the shop stewards appointed to her site. (Markert, 23-24).

> 2. These monies are supposed to be reapplied to our Pentegra or Boon group accounts, or both. Pentegra and Boon group have both reported no monies received from BSI since Nov. 2015. As of this date there is approximately 5000.00-6000.00 per officer from Nov. until now that is still unaccounted for by BSI.
>
> 3. I will take your advice and file a complaint with the DOL. I will also have PSO Frazier contact the Commander of FPS to notify him of this ongoing matter. Let BSI know this is there final chance to resolve this before it goes legal.

(Joint Exhibit 28). Miller forwarded Goins' August 9, 2016 email to Jillian Nichols, Operations and Account Manager for BSI, who explained that issues arose as a result of subcontractor Greenlee's failure to make appropriate contributions writing, in part,

> I would assume with the names on the email below, Albert Frazier and Andrea Lewis, they are referencing the previous Greenlee contract. Local 217 has been updated all the way through the end of July. Greenlee, however, is separate. We had to go back and audit all months that they ever sent us. I have to go to Pentegra and get all funds redistributed from what was already uploaded (based on their –Greenlee's- previous incorrect reports). This costs $150 per hour and isn't an overnight situation, so before I send the completed audit to them, I want to make sure it's correct. We had to get a credit from the Boon accounts to apply back over to Pentegra as well. So, I will reach out to Pentegra and get an estimated time frame on when they anticipate the funds being able to be transferred.
>
> . . . . Members under the previous Greenlee contract, however, are missing hours. Greenlee submitted hours to us through pay date 4.22.16, I have seen nothing from them since then (remaining contract hours and funds). Per my email documentation regarding the transfer of this contract, Allied Barton was to pick these members up on 5/13/16. I am not showing Allied Barton picking them up on hours reports until the end of June. I have sent an email to Allied Barton to figure this out and get a direct answer on what the reports they sent me cover and where I can retrieve the missing hours and funds.

> This is the most recent update I have regarding this contract. I have audited all months from the beginning, Sept – April. I have sent all corrected hours to Boon and updated all benefits (for members enrolled). 401k was audited and is being completed to upload from January – April.

(Joint Exhibit 28). In August 2016, Frazier and Markert again contacted BSI, with Markert alleging, in part, that the "lack of communication and blatant disregard from UGSOA and its legal representative(s) concerning our missing >100,000, and growing, is beyond disheartening and down right criminal." (Joint Exhibit 27). Nichols responded to Frazier and Markert, at length, again explaining that BSI was in the process of recovering funds from Greenlee:

> I know you are well aware of what we have done to ensure everything is done correctly and to the benefit of UGSOA members. We are all well aware of the unfortunate situation that Greenlee has put their former employees under. . . . [W]hen Greenlee stopped sending the reports and funds, UGSOA and BSI got on a call with Greenlee forcing their hand to action of sending us the missing/required hours reports and funds from January – April[.]
>
> . . . . [W]e are still missing hours and funds from 4/22/16-6/13/16. We have reached out to all avenues to retrieve these hours and funds. We have not received a response or decision on the action that will be taken on retrieving these funds.
>
> BSI is willing to submit all individual audits to all members affected by this outlandish and gross situation you have endured. I know that the above response is not a 100% resolution, but please rest assured that we will take whatever action necessary (along with UGSOA) to retrieve the missing information.

(Joint Exhibit 27). In October 2016, Markert emailed Nichols seeking an update related to a health insurance question. Nichols replied, writing in part,

> Please keep in mind that we have been working and fighting for your reimbursement for quite some time now, so the element of surprise regarding this situation is not the case. Please know that I cannot give out an exact date as to when I will give you an answer

> because once again, we are at the mercy of someone else on getting the exact amount.

(Joint Exhibit 29). Markert responded, writing, in part,

> Okay so another story another delay. . . . Here's what I'll do since BSI can not efficiently conduct timely business with their subcontractors and/or produce reliable audit(s)[.] I will pull the 8 paystubs proving my actual hours worked between August through December and do the simple math for you. This is not a complicated process, certainly nothing that justifies 4 months! . . . I would love to see at least 1 costly mistake involving BSI resolved within a reasonable time frame. It's called accountability. Thousands of dollars over the last year missing and it's never BSIs error or within their capabilities to fix! Unacceptable.

(Joint Exhibit 29). Nichols replied, writing, in part,

> Your continued allegations and accusations are hindering our productivity in reaching our end goal which is to get all your funds to your 401k account that we (BSI) fought for. Please respect the fact that we are absolutely doing what we can to get your fund back to your 401k. I appreciate the fact that you want to send us paystubs, but as explained below, this is not a simply mathematical calculation (as indicated). We are talking about almost 24 months' worth of H&W and funds.

(Joint Exhibit 29).

Initially, the International attempted to resolve health and welfare issues caused by Greenlee's failure to make required health and welfare contributions directly with Greenlee but Greenlee would not cooperate in recovering the funds. The International then contacted Allied who recovered the funds which were then applied to employees' accounts. Thereafter, a process was used to determine what the earnings or losses would have been on the accounts had the payments been timely applied. Greenlee was notified of additional interest

payments due as a result of those calculations. (Natale, 117).[4] By July or August of 2017, Greenlee made its final interest payment and all the members' health and welfare accounts had been reconciled. (ALJ Decision, 9).

Despite UGSOA and BSI's efforts to recover funds, on March 31, 2017, Goins emailed International and Local 217 representatives, contending, "There is still about 150k in unaccounted funds deducted from PSO's since 2012, between the VA & the SSA." (Joint Exhibit 54). Sullivan replied to Goins, writing, in part, "UGSOA doesn't keep members hostage. If you're unhappy with us or Local 217, we can disaffiliate with your site and free you up to go with Steve Maritas' union." (Joint Exhibits 54 and 30). Goins replied, "We may be able to consider your offer once we receive the H&W and 401k monies missing from each PSO[.]" (Joint Exhibit 30). Sullivan emailed BSI stating,

> We're disaffiliating from a portion of local 217. See below. They said they are missing money. Want to look into this and advise? Once that's completed I finalize things on my end.

(Joint Exhibit 30). Goins then added, "And let's not forget the thousands in unpaid medical expenses. Thousands!" (Joint Exhibit 30). On April 4, 2017, Nichols replied to Goins writing, in part,

> We see that you are alleging there is still a very large sum of money ($150k per your statement) still unaccounted for. We agree that your small portion of Local 217 contract has been moving back and forth between sub-contractors (Trident, Butler and Greenlee) since inception of the Local. We can also agree that none of the sub-contractors were ever constant in hours or funds submittal for the benefit of you or any of your fellow members. And, we will also agree that there are still <u>some</u> hours and funds that are unaccounted for when you all were employed with Greenlee

[4] The International always intended to finalize resolution of the health and welfare contribution issue. (Natale, 116).

> Security. However, we cannot agree that the amount owed is anywhere near $150k.
>
> BSI & UGSOA have always done what we could to ensure you were paid your correct earned H&W funds. And, because of that, this specific account was audited multiple times. Greenlee did finally pay out a portion of what was owed in December of 2016 when you were given a large upload into your 401k account of over $4k. However, we are still attempting to collect the funds that are unaccounted for hours worked between May & June 2016, prior to C&D/Allied/Universal taking your contract back over. (Please see the final audit notes and amount shown below). As you will see, the TOTAL amount still owed from Greenlee for benefits & 401k is a little over $23k. This is nowhere near the alleged amount on your behalf of $150k.
>
> . . . In response to your allegation, we will require documentation of the alleged amount of $150k unaccounted for. . . . We don't have an anticipated time frame around retrieving these funds, but we feel positive we will be getting them. Please take time to read through the information provided and if you feel your original allegation is justified, please submit the supporting documentation and we will research.

(Joint Exhibit 54). In April of 2017, Natale notified PSOs that BSI was finalizing recovery of the remaining owed funds and that he would seek assistance from the Department of Labor ("DOL") if necessary. (Joint Exhibit 31). On May 1, 2017, Natale further notified PSOs regarding the status of Greenlee's health and welfare contributions by email writing, in part,

> BSI is now in possession of half of the missing funds and the remainder will be forwarded to them with updated hours reports this week. Once all funds are received they will be processed in each individual officer's accounts. An additional deposit should be expected in each officer's account once calculations have been made for any lost gains because of the delay on the Company's part in furnishing the funds in a timely manner.

(Joint Exhibit 34; see Joint Exhibit 38). On May 3, 2017, Frazier responded writing, in part,

> . . . . We have officers that still to this day have medical bills that range from $2500.00- $35000.00 unpaid by Boone group who disguises themselves to be Aetna. We received little to no help from the local 217 nor the International UGSOA. James in your own words you stated "regardless of each change, we have ensured that each member is made whole when and if violations occur. WE'VE had multiple violation I just gave a few when will we be made whole Sir? . . . . James your email was full of lies, deceit, indirect threats, and contradictions. i would like to take the time to thank you for exposing yourself yet again.

(Joint Exhibit 40).

On cross-examination, Markert and Frazier acknowledged that UGSOA and BSI had worked to resolve issues created by missing health and welfare contributions. (Markert, 44-45; Frazier, 64). Markert admitted that Nichols had told her that all missing funds were accounted for and Markert could not recall providing documentation to show that money was missing. (Markert, 46-47). Frazier never submitted any paperwork regarding uncovered medical bills and made no efforts to obtain reimbursement although he continued to complain to BSI that funds were missing after BSI indicated that it believed all of the funds were located. (Frazier, 65-67).

Markert, Frazier, Goins, and Carl Alberg were nominated to run for office within Local 217 as a part of a Spring of 2017 election. Ultimately, approximately 25 PSOs, including Markert, Frazier, and Goins as well as some PSOs who were not assigned to the VA, SSA, or IRS sites, were not permitted to run for office or vote in the election because they were not members in good standing of Local 217 due to their failure to pay dues. (Natale, 119-120, 127, 133; see Joint Exhibit 10 at Section 2). Notations appear on PSOs' biweekly paychecks showing the amount of dues deducted. (Markert, 39; Frazier, 67).

On April 1, 2017, Goins filed a complaint with the DOL to contest the election. (Goins, 82-83). On April 19, 2017, Goins emailed Local 217, copying Sullivan, demanding that certain allegations be addressed by the Local and noting that a formal complaint had been filed with DOL. (Joint Exhibit 33).[5]

Natale recalled receiving emails from Markert, Goins, and Frazier in addition to other individuals at the SSA, IRS, and VA sites in March and April of 2017. (Natale, 129). Natale exchanged contentious emails with Goins, Frazier, Markert and other PSOs related to the dues issue with Frazier demanding in part, that "local 217 and the International UGSOA take responsibility" for their failure to pay dues (Joint Exhibits 31, 32, 34, 35, 38, 39 and 40). Natale testified that based on communications with various members, it was clear that the relationship was shattered. Natale felt that the union's resolution of issues was never to the satisfaction of the members. (Natale, 119-120). Despite the International's successful efforts to restore health and welfare funds, employees continued to make accusations that additional funds were missing. However, they provided no documentation showing that any funds were missing. (Natale, 119).

In other instances, the International had successfully split locals into separate groups as a way to keep the peace between unit members. The

[5] According to Goins, DOL recommended that the election be conducted again. (Goins, 84-85). Natale was not aware of any complaints filed with the DOL prior to the disaffiliation vote. The DOL complaint was made against Local 217 only and Local 217 handled the DOL complaint using its own attorney. (Natale, 120, 126). As a result of its investigation, DOL found issue with Local 217's failure to maintain the secrecy of ballots. The DOL, however, did not express any concerns regarding the disqualification of unit members who had failed to pay dues. (Natale, 121).

International Executive Board voted by email to split the VA, IRS, and SSA sites from Local 217 and create a new local called Local 217B. (Joint Exhibit 18). UGSOA was delayed in notifying PSOs about the separation because the Employer declined to identify the PSOs assigned to the affected sites. (Natale, 121). The International notified unit members of the separation between Local 217 and Local 217B on May 22, 2017 by letter stating, in part,

> It has become apparent over the last several months that many of the Local 217 membership working at [VA, SSA, and IRS sites] have become increasingly dissatisfied with the services of Local 217 and the administration running it. . . . Further details on this transition will be forthcoming to those affected by this change, including the election of a board of officers, by-laws and CBA preparations.

(Joint Exhibit 11; Natale, 108).

On May 31, 2017, Natale emailed the Employer regarding the split. (Joint Exhibit 12). Natale also discussed the separation face-to-face with David Chapla, the Employer's Vice President of Labor Relations. Natale told Chapla that once Local 217B had selected a board, Local 217B would begin the process of negotiating a collective bargaining agreement. Until that point, the terms of the existing collective bargaining agreement would be applied to both Local 217 and Local 217B. (Natale, 112, 121-23). The Employer continued to apply the terms of the collective bargaining agreement to Local 217B as requested. (Natale, 123). The Employer raised no objection to the creation of Local 217B. (Natale, 134).

Natale testified that no election for Local 217B officers was held because UGSOA had simply not gotten to that point in the process. Local 217B would

have been treated like any other new local and Natale would have distributed a mailing for nominations and sample bylaws. Similarly, Local 217B had not begun negotiating a collective bargaining agreement because it had not elected officers. (Natale, 127).

Natale explained the benefits of splitting Local 217 into two groups to Goins. (Natale, 132; Goins, 93). Frazier continued to function as a shop steward following the split to Local 217B. (Frazier, 62). Frazier understood that the International was going to give Local 217B its own negotiating team. (Frazier, 62). Nevertheless, Local 217B PSOs immediately rejected continued representation by UGSOA despite being advised of the potential benefits of the change. On June 6, 2017, Goins emailed Sullivan, writing,

> Desiree, we need to get something straight. These ridiculous attempts to split the Union are futile. This must be voted upon by all parties of the Local involved, which there has been no vote as usual. Also, you must understand, the VA, SSA & IRS are not the only Officers dissatisfied with UGSOA. There are Officers in every building on the contract who are totally fed up with the incompetence of the UGSOA. ALL PSO's with the exception of a small regiment who are on the union board want to disaffiliate. NEWS FLASH! We will not split, that is asinine. We are going to disaffiliate when we are ready. It will be the entire majority of the Local. We are going to vote the UGSOA out and vote a new union in. **The PSO's of the Local are no longer willing to tolerate your theft, your lies, your misrepresentation, your mismanagement of funds and your unfair union practices. The UGSOA is a pathetic disgrace built on totally lies. We went no more affiliation with this crooked, twisted, corrupt association you call an international.** You don't even have a Legal agency affiliate. We will be disaffiliating soon enough. We will be removing the entire Local from under your authority. You will not split us, we stick together. We all go or, we all stay. in the case of the UGSOA, we are all going and we will never do any further union business with the UGSOA ever again!

(Joint Exhibit 45) (emphasis added).[6] Goins testified that he had no evidence that the Union was stealing health and welfare payments and admitted that he accused the Union of corruption without any proof. (Goins, 90-92). Sullivan replied to Goins, writing,

> The International has the right to do this and we did by a majority vote of the International Executive Board. This Executive decision will stand. You've been saying your group is unhappy, you're not being represented, you're treated differently from the rest of the Local, etc.... Based on all of the emails, it was determined that you would be better served running your own Local. Your own Officials, accounts, contract negotiations, etc... Your accusations are ridiculous. Don't send me anymore emails calling me a liar, thief, or any other name.

(Joint Exhibit 45). Goins wrote back asking, "This would mean we have our own union board, conduct our own union meetings, set up our own legal team, negotiate our own cba, we would be our own international and we would collect our own union dues right???" (Joint Exhibit 45). Sullivan replied, "You would be your own Local. Your own Board, Your money, etc...." (Joint Exhibit 45). Goins replied, "If this means we will be legally dissaffiliated from the UGSOA and your willing to put it in writing, than let's talk." (Joint Exhibit 45). Sullivan replied, "UGSOA is still your International but you would be your own local." (Joint Exhibit 45). Goins responded stating,

> Desiree, we both know this will not work. We don't get along well now, it would be catastrophic if we were a separate local trying to work with an international that refuses to properly represent us.

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[6] Goins testified that he emailed UGSOA on behalf of the entire union following the separation of Local 217 and Local 217B. (Goins, 98). Natale understood that Frazier and Goins were the de facto spokespeople for 217B because they stated multiple times in their communications that they were speaking on behalf of others. (Natale, 133-34).

> You forget that! It is a total disaffiliation that we need. You even said that in previous emails. Why are you changing now???
>
> We will only consider a split if you are willing to allow us to disaffiliate from the UGSOA and allow every PSO who is dissatisfied with the UGSOA disaffiliate as well. We will need this in writing.

(Joint Exhibit 45). PSO Jay Pharrell also sent a reply to Sullivan noting, "Well you and the whole international need to understand that majority of local 217 is unhappy with ugsoa period." (Joint Exhibit 44). Sullivan responded writing,

> We don't have to represent any of you. We can disaffiliate with you just as you can have an election to go. If that's your choice, that's fine too. I'll send the notice out by the end of the week. These are called protected activities and we all have a right to them.
>
> We "picked" the buildings that were sending us emails saying they weren't happy. We separated you so that you could operate independently. Your own account, officials, negotiations, etc…
>
> . . . . So in summary, we separated you so you could "run your own show" an d not be under the Local 217 Board. If that's not what you want, let me know and I'll take care of things on my end.

(Joint Exhibit 44). At hearing, Natale testified that it was clear based on Goins email that the Local 217B PSOs no longer wanted ties to UGSOA whether it pertained to benefits or to the union in general. (Natale, 126).

On June 6, 2017, the Executive Board voted by email to disclaim interest in Local 217B. (Joint Exhibit 19). Natale testified that the International disaffiliated from Local 217B because the PSOs expressed dissatisfaction. (Natale, 113). Even after Natale had explained to the PSOs that Local 217B would be its own entity with its own board, collective bargaining agreement, and bank accounts, he continued to receive complaints. (Natale, 125).

On June 7, 2017, Natale notified PSOs within Local 217B by letter that UGSOA had disclaimed interest in the unit. (Joint Exhibit 13). After the disclaimer of Local 217B, Natale had discussions with Chapla regarding impacts on benefits and staffing by phone and email. (See Joint Exhibit 16). The Employer felt that there would be no impact on PSOs' overtime since PSOs so infrequently worked overtime at sites other than their assigned sites. (Natale, 116). While no immediate issues were identified as a result of the disclaimer, Natale agreed to discuss matters with the Employer as they arose. (Natale, 110, 123-24). Ultimately, since both the International and the Employer had the same benefit plan through the Boon Group, the Employer kept the PSOs' health and welfare benefits active and backdated the benefits to July 1, 2017. (Natale, 124; Joint Exhibit 52; see Joint Exhibit 53).

Natale received no notification from other employees indicating disagreement with Frazier and Goins until after the disclaimer. (Natale, 134). After the disclaimer, some employees at the IRS site notified Natale that they still wished to be a part of UGSOA. (Natale, 133).

III. ARGUMENT

Respondents respectfully request that the Board set aside the ALJ's findings that they violated Section 8(b)(1)(A) of the Act by threatening to disclaim representation of the IRS, VA, and SSA PSOs and by thereafter disclaiming interest in those PSOs due to alleged dissident activities of certain PSOs. The evidence presented at hearing demonstrates that UGSOA disclaimed interest in the IRS, VA, and SSA PSOs when it could no longer

effectively represent those PSOs due to their extreme dissatisfaction with the Union. Due to internal strife, typified by unsubstantiated allegations made against the Local and International, UGSOA first lawfully reorganized Local 217 into two distinct entities, Local 217 and Local 217B, comprised of frequently subcontracted sites. Thereafter, in June of 2017, UGSOA permissibly disclaimed interest in Local 217B when the Local 217B PSOs made it clear that they did not wish to have any continuing connection to the International.

In reaching his decision, which contains multiple haphazard factual findings that misstate information clearly conveyed in the record, the ALJ ignored entirely precedent establishing that unions may disclaim interest in representing employees when they are no longer able to do so even where employees' involvement in the most extreme forms of dissident activity, namely, the filing of deauthorization and decertification petitions causes the representational breakdown. Instead, to support his finding that Respondents unlawfully retaliated against PSOs for opposing UGSOA's leadership, the ALJ cited inapposite precedent which has been explicitly overruled by a subsequent decision.

1. UGSOA Excepts To Multiple Factual Findings Of The Administrative Law Judge That Did Not Accurately Reflect The Record Evidence.

The ALJ's Decision contains multiple factual findings that do not accurately reflect, largely undisputed, record evidence. These erroneous conclusions should be corrected especially to the extent that they in any way fueled the ALJ's finding that Respondents' separation of, and subsequent

disclaimer of, the VA, SSA, and IRS PSOs was motivated by an unlawful desire to retaliate against them for dissident activities.

A. The ALJ's Finding That Local 217 Members Received A $4.20 Per Hour Health And Welfare Contribution For Every Hour Worked Is Erroneous (Exception 11).

In his decision, the ALJ found that, as of 2017, Local 217 PSOs received a $4.20 per hour health and welfare contribution for every hour worked. (ALJ Decision, 6: 19-22). The record evidence shows that health and welfare contributions were made by the Employer for a maximum of 40 hours per week. Markert testified that PSOs received a health and welfare contribution of $4.20 per hour worked not to exceed 40 hours a week. (Markert, 20). The collective bargaining agreement covering Local 217 also reflects that health and welfare contributions were capped at 40 hours per week. (Joint Exhibit 1, at Appendix A, Section 2 ("Health and Welfare contributions will be for all hours paid not to exceed forty (40) hours per week.").

B. The ALJ Erroneously Concluded That Michael Coston Was Nominated To Run For President Of Local 217 In The Spring Of 2017 Election (Exception 13).

As a part of his decision, the ALJ found that "longstanding frustration with their union's affairs led Frazier to run for Local 217 president, Goins for vice president and Markert for recording secretary[.]" According to the ALJ, then Local 217 President Coston "was nominated to run for another term as president, leading a different slate of candidates." (ALJ Decision, at 9). Such a conclusion should be set aside where the record indisputably shows that

Coston was running for treasurer of Local 217 and was not opposing Goins, Frazier, or Markert for any position. (Markert, 27: 8, 13). Shawn Watts and Andrew Richards were running for president and recording secretary, respectively. PSO Jonathan Mears was also running for a position. (Markert, 27: 8, 13). Thus disqualifying Frazier, Goins, and Markert from participating in the election was in no way motivated by a desire to maintain the control of Local 217's then leadership.

C. The ALJ Erroneously Found That Prior To June 2017, PSOs Could Be Assigned To Work At And Earn Overtime At Any Contract Site (Exception 9).

The ALJ concluded that, prior to UGSOA's disclaimer of Local 217B, PSOs could be assigned to and earn overtime pay at any contract site. (ALJ Decision, 2: 31-32). Such a finding is clearly erroneous based on the record. At hearing, Goins, who worked only about eight overtime shifts per year, testified that PSOs could work at sites, other than their assigned sites, only if they were familiar with the post and the requirements of the post. (Goins, 86, 95). Thus, the evidence shows that PSOs could not work at any post without constraint. Instead, PSOs could take overtime assignments at posts other than the posts to which they were assigned only if they were familiar with the post and the requirements of the post.[7]

[7] Indeed, at hearing, Natale's unrebutted testimony established that the Employer did not believe that the working of overtime at other sites happened frequently enough to cause issues upon UGSOA's disclaimer of Local 217B. (Natale, 116).

D. The ALJ Erroneously Concluded That Frazier, Markert, And Goins Were Paying Dues Around The Time Of The Election (Exception 12).

The ALJ further erroneously concluded that Frazier, Markert, and Goins were paying dues at the time of the Local 217 election in or about March of 2017. The ALJ found that Frazier, Markert, and Goins' dues were being deducted around the time of the election and that any delinquency had occurred at a point in the past. (ALJ Decision, 9: n.17). The record evidence does not support the ALJ's finding.

At hearing, Markert explicitly acknowledged that she was not paying dues at the time of the Spring of 2017 election. Markert testified that she obtained a copy of her payroll where she thought she was paying dues but learned that she was not. (Markert, 28: 3-25; 29: 1-5). Thereafter, after learning she was not paying dues, Markert set up dues deductions with the Employer. (Markert, 29: 6-12). Markert explained that she believed that the Employer "had dropped the ball" because it was not actually deducting her dues although she had an authorization card on file with the Employer. (Markert, 47: 12-21).

Similarly, in March of 2017, Miller emailed Goins identifying the months that he had not paid dues which included June, July, August, September, October, November, and December 2016 and January, February, and March 2017. (Joint Exhibit 49). Thus, the record indisputably shows that Goins, like Markert, was not paying dues at the time of the Local 217 election. Although

the ALJ found that the dues deficiency had occurred at some earlier point in time, the record does not support such a finding.

E. The ALJ Erroneously Found That Natale Proceeded To Implement The Separation Of Local 217 And Local 217B On May 31, 2017 By Formally Notifying Local 217 Leadership Of The Action (Exception 14).

As a part of his decision, the ALJ found that on "May 31, Natale proceeded to implement the separation by formally notifying Local 217 leadership of the action and requesting seniority lists for the three buildings." (ALJ Decision, 18). The ALJ proceeded to find that Natale notified the Employer of the split on the same day, attributing the action to internal issues and various other reasons. (ALJ Decision, 18). The record shows that the ALJ erroneously confused the notification sent to the Employer with the letter sent to Local 217 PSOs, not just the Local 217 leadership, regarding the reorganization.

Contrary to the ALJ's findings, on May 22, 2017, Natale sent a letter to Local 217 PSOs providing them with notification of the split. That letter stated, in part,

> Local 217 Member
>
> It has become apparent over the last several months that many of the Local 217 membership working at [VA, SSA, and IRS sites] have become increasingly dissatisfied with the services of Local 217 and the administration running it. . . . Further details on this transition will be forthcoming to those affected by this change, including the election of a board of officers, by-laws and CBA preparations.

(Joint Exhibit 11; Natale, 108). On May 31, 2017, Natale emailed the Employer's representatives, including Chapla, writing, in part,

> The UGSOA International Executive Board made the determination to split Local 217 because of internal issues and various other reasons. Effective immediately, Local 217 will be split into 217 and 217B. . . . At this point, all terms will remain the same, except for a modification of the recognition clause of the CBA. Once an election is held for the new 217B, we will schedule negotiations for this group. If I could please be provided with a seniority list, including mailing addresses, for the 3 buildings listed above for new Local 217B, it would be appreciated.

(Joint Exhibit 12). Thus, the documentary evidence shows that the ALJ mistakenly concluded that the notification provided to the Employer was sent to the Local 217 leadership only and that the letter sent to Local 217 PSOs was given to the Employer. Therefore, the ALJ's findings on this point should be corrected.

F. The ALJ's Finding That The Recovery Of Health And Welfare Contributions For Local 217 Members Was Chaotic Is Not Supported In The Record (Exception 10).

The ALJ characterized the recovery process for the underfunding of Local 217's members health and welfare accounts as "chaotic." (ALJ Decision, 6: n.11). In reaching that finding, the ALJ did not point to any particular portions of the record. That is likely the case because the evidence does not show that UGSOA or BSI took inadequate, ineffective, or dilatory steps to recover funds for impacted PSOs. Instead, the evidence clearly shows that UGSOA, through BSI, achieved resolution of the issue through a lengthy and involved process. BSI meticulously audited Local 217 members' accounts and recovered missing

funds from a recalcitrant subcontractor who had failed to make proper payments.

Nichols' emails recount BSI's methodical pursuit to recover missing funds from Greenlee which was further marred by Greenlee submitting inaccurate hours reports and which also required and a redistribution of funds between Boon and Pentegra accounts. (Joint Exhibits 27, 28, and 30). While BSI and UGSOA identified missing funds by auditing each month, retrieval of those funds was delayed by Greenlee. (Joint Exhibits 27 and 28). Eventually, UGSOA was forced to involve Allied in the recovery of funds from Greenlee. (Natale, 117). Thereafter, a process was used to determine what the earnings or losses would have been on the accounts had the payments been timely applied and additional interest payments due as a result of those calculations were obtained from Greenlee. (Natale, 117; Joint Exhibit 34).

That members complained about the length of the recovery process fails to show that it was either disorganized or that it could have been completed more expediently. Indeed, Markert's exchanges with Nichols show that Markert did not actually understand the recovery process and that she mistakenly believed that the mathematically complex undertaking involved only simple arithmetic. (See Joint Exhibit 29). Where the record shows that, despite Frazier, Markert, and Goins' largely unsubstantiated complaints, UGSOA and BSI were concertedly seeking a resolution to the health and welfare contribution issue through an organized, albeit lengthy process, the ALJ's characterization of the recovery of contributions as "chaotic" should be set

aside. While the recovery process was lengthy, and punctuated by frequent complaints and unsubstantiated allegations made by Frazier, Goins, and Markert, the record does not reflect that UGSOA and BSI's recovery efforts were disorganized or confused.[8]

G. The ALJ Erroneously Concluded That The Evidence Failed To Show That Markert, Frazier, and Goins Spoke On Behalf Of The Employees At The VA, SSA, and IRS Sites (Exception 7).

As a part of his decision, the ALJ opined that the evidence failed to establish that Goins, Frazier, and Markert spoke on behalf of the VA, SSA, and IRS site PSOs in their communications with UGSOA. (ALJ Decision 28: 7-9). Contrary to the ALJ's finding, the record contains ample evidence showing that Markert, Goins, and Frazier held themselves out as representatives of the SSA, VA, and IRS PSOs in their interactions with UGSOA related to both the health and welfare contribution and dues issues.

Repeatedly, Goins, Frazier, and Markert communicated with UGSOA, representing that they were acting on behalf of other PSOs. Goins emailed UGSOA about health insurance issues on behalf of other PSOs and missing health and welfare contributions. (Joint Exhibits 26 and 54). Goins even notified UGSOA that he intended to file a DOL complaint on behalf of the impacted PSOs who had not received contributions from subcontractors. (See

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[8] It is not clear that Frazier, Goins, and Markert even understood the root of the health and welfare contribution issue. In many of their communications, they implicitly accused UGSOA and its third-party administrators of stealing their health and welfare funds, although it was crystal clear to all involved that subcontractors had failed to ever make the requisite benefit payments. (See Joint Exhibits 27, 28, 40, 45 and 54).

Joint Exhibit 28 ("As of this date there is approximately 5000.00-6000.00 per officer from Nov. until now that is still unaccounted for by BSI.")) Likewise, Frazier emailed UGSOA on behalf of PSOs who had not received health and welfare contributions from subcontractors. (See Joint Exhibit 40 and Joint Exhibit 27 ("PSOs are still hearing conflicting information from BSI, Boon/Aetna, Pentegra. A few PSOs have recently received offensively miniscule contributions into their Pentegra account's without any explanation. Once all audits are completed the PSOs will require a letter of explanation/resolution[.]"). Markert also complained on behalf of the group of impacted PSOs. (See Joint Exhibit 27 ("The lack of communication and blatant disregard from UGSOA and its legal representative(s) concerning our missing >100,000, and growing, is beyond disheartening[.]"). Moreover, Frazier was a shop steward for the VA and SSA sites, acting on behalf of those PSOs in an official role, and Goins became a de facto steward. (Frazier, 52-54; Goins, 79-80, 86). Markert testified that she recognized Goins and Frazier as the shop stewards appointed to her site. (Markert, 23-24).

Frazier, Goins, and Markert also routinely represented that they were speaking on behalf of other PSOs in communicating with UGSOA about the dues issue. (See Joint Exhibit 32 and Joint Exhibit 34 ("I will speak with the "CREW" to see who would be willing to do a possible ach direct debit, if the UGSOA is set up to do that. I will let you know what the "CREW" is willing to

do[.]").[9] Indeed, the language used by Markert, Goins, and Frazier in their messages indicated that they were acting on behalf of other PSOs with them frequently using the word "we" to express their demands. (See Joint Exhibit 34 ("We have filed a formal complaint with NLRB and DOL for unfair union practices, we must wait for the outcome of the investigation.").

Although many other PSOs were often copied on Goins, Frazier, and Markert's contentious and accusatory communications to UGSOA, no evidence exists to suggest that any of those PSOs ever expressed that Goins, Frazier, and Markert were not acting in their interests or disagreed with their views although capable of doing so. (See Joint Exhibits 35, 38, and 40). Natale understood that Frazier and Goins were the de facto spokespeople for 217B because they stated multiple times in their communications that they were speaking on behalf of others. (Natale, 133-34). Indeed, Natale received no notification from other employees indicating disagreement with Frazier and Goins until after the disclaimer. (Natale, 134).

Where Goins, Frazier, and Markert repeatedly held themselves out as representatives of the SSA, VA, and IRS site PSOs in their communications with UGSOA regarding both health and welfare contributions and dues, the record supports a finding that they were acting on behalf of those PSOs. Although given ample opportunity, no PSOs from the VA, SSA, and IRS sites ever contacted UGSOA to contradict Goins, Frazier, or Markert or to repudiate them as their representatives. Clear grounds existed for UGSOA to conclude

[9] Goins even filed a complaint with the DOL about the conduct of the Local 217 election. (Joint Exhibit 33).

that Goins, Frazier, and Markert were acting on behalf of the VA, SSA, and IRS site PSOs.

2. The Evidence Fails To Demonstrate That UGSOA Unlawfully Threatened To Disclaim And Then Unlawfully Disclaimed The SSA, IRS, and VA Site PSOs To Retaliate Against Certain PSOs For Opposing Union Leadership In Violation Of Section 8(b)(1)(A) Of The Act.

Contrary to the ALJ's findings that UGSOA unlawfully retaliated against certain PSOs for opposing the Union's leadership, the evidence presented at hearing shows that UGSOA first created Local 217B, comprised of the VA, SSA, and IRS site PSOs, and then subsequently disclaimed interest in Local 217B because of a complete breakdown in the representative relationship. UGSOA could no longer effectively represent the SSA, VA, and IRS site PSOs who, at that time, were in a "virtual revolt" (ALJ Decision, at 27) against UGSOA. Although UGSOA continually pursued and resolved the issues raised by the VA, SSA, and IRS PSOs, including the recovery of missing health and welfare contributions, those PSOs continued to level baseless accusations, including of criminal corruption, against UGSOA. Existing precedent, which was totally disregarded by the ALJ, demonstrates that unions may lawfully disclaim interest in representing employees due to a breakdown in the representational relationship caused by even the most extreme forms of dissident activity.

An exclusive bargaining agent may unequivocally and in good faith disclaim further interest in representing a bargaining unit. Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980). However, a disclaimer will not be given effect if it inconsistent with the union's conduct nor if it is made for an improper purpose

such as the evasion of the terms and obligations of a collective bargaining agreement. Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980) (upholding finding that union validly disclaimed interest in unit for a legitimate purpose to further organization of firefighters and transferred jurisdiction over employee to another local where it did not force representation on employee in the unit).

While there is generally a dearth of precedent regarding disclaimers, particularly with regard to the legality of disclaimers outside of representation proceedings/contract bar challenges, under existing Board precedent, unions may lawfully disclaim interest in bargaining units because of the two most extreme forms of dissident activity: the filing of deauthorization petitions and decertification petitions.

A union may disclaim its role in response to the employees' filing of a deauthorization petition or even the loss of a deauthorization election. Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999). Indeed, a union may do so without providing employees with any objective evidence that its continued representation of them would be infeasible. Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); see also American Sunroof, 243 N.L.R.B. 1128, 1128-29 (1979) (giving effect to disclaimer undertaken in response to the filing of a deauthorization petition) NLRB v. Circle A&W Products, 647 F.2d 924, 926-27 (9th Cir. 1980) (affirming order requiring employer to bargain with newly elected union where prior union disclaimed representation after it lost deauthorization election and where dispute over union security clause was union's sole reason for disclaiming interest); Riverfront Distributing, Inc., 1995 WL 1918089 (ALJ

Decision 1995) (dismissing allegation that union violated Section 8(b)(1)(A) by refusing to negotiate over the effects of the closure of the salesmen's unit for an unfair, arbitrary or discriminatory reason because the employees deauthorized union).

Similarly, a union may lawfully disclaim representation of employees in response to the filing of a decertification petition. Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950) ("The Board has repeatedly held, however, that no question concerning representation exists, and no decertification election may be held, when the union sought to be decertified has, as here, disclaimed interest in representing the employees involved."); Federal Shipbuilding & Drydock Co., 77 N.L.R.B. 463, 464 (1948) ("The Union's disavowal of any claim or wish to represent the employees eliminates the question concerning representation[.]").

A. Sullivan's March Email To BSI Was Not An Unlawful Threat Of Retaliation That Violated Section 8(b)(1)(A) Of The Act (Exceptions 1-3).

The ALJ found that Sullivan unlawfully threatened Goins, to discourage Goins from vigorously pursuing resolution of the PSOs' health and welfare contribution issues by emailing BSI on March 31, 2017. (See Exceptions 1 and 2). In relevant part, Goins emailed Sullivan, apparently unprompted, stating, "There is still about 150k in unaccounted funds deducted from PSO's since 2012, between the VA & the SSA." (Joint Exhibit 54). Thereafter, Sullivan responded that UGSOA could disaffiliate from Goins' site. Goins replied, "We may be able to consider your offer once we receive the H&W and 401k monies

missing from each PSO[.]" (Joint Exhibit 30). Sullivan then emailed BSI to ask about Goins' claims, writing, in part, "We're disaffiliating from a portion of local 217. See below. They said they are missing money. Want to look into this and advise? Once that's completed I finalize things on my end." (Joint Exhibit 30).

While the ALJ has construed Sullivan's email as a threat to disaffiliate from Goins' site without resolving the ongoing health and welfare contribution issue, the evidence shows that UGSOA was already extensively engaged in resolving that matter and that the PSOs were apprised of those efforts. (Joint Exhibit 27). Where PSOs were aware of UGSOA's efforts to recover missing funds, Sullivan's email to BSI regarding the status of those efforts was not an effort to retaliatorily silence a critical member. Indeed, Goins' extreme claim was essentially baseless. BSI's response further shows that Goins vastly exaggerated the status of any existing issue with health and welfare contributions. At most, only $23,000 of contributions remained uncollected and BSI was actively pursuing a recovery of those funds. (Joint Exhibit 54).

Further, the evidence shows that Goins did not consider the statement to be a threat. Goins continued to complain to UGSOA and later referred to Sullivan's email as only a suggestion that UGSOA cease representing certain PSOs. (See Joint Exhibit 34) ("Jim as I said to Desiree when she made the suggestion for us to disaffiliate from UGSOA, there is still unfinished business that UGSOA has not resolved."). In contrast to the ALJ's finding, Sullivan appears to merely have been checking on the status of the health and welfare issue to respond further to Goins. Goins had indicated that a resolution of the

health and welfare issue was a necessary condition to obtain his agreement on the proposed disaffiliation.

Indeed, the legal precedent cited by the ALJ in support of his decision is utterly inapposite to the events at issue. (See Exception 3). In finding that Sullivan unlawfully threatened Goins to discourage him from vigorously pursuing resolution to 401(k) issues, the ALJ cited 1115 Nursing Home and Hospital Employees Union (Pinebrook), 305 N.L.R.B. 802 (1991). In that case, the Board found that a union violated Section 8(b)(1)(A) by threatening employees that they would lose their representation and union job security if they voted to rescind the union's authority to rehire union membership as a condition of employment because the communication could be construed as threatening that the union would remain in place as the unit representative but would not properly represent employees if they voted to discontinue the union-security provision in the contract. Here, Sullivan's email cannot be construed in a manner suggesting that UGSOA would remain in place as the PSOs' representative but would refrain from representing certain PSOs. Sullivan explicitly indicated that PSOs would be able to select another representative.[10]

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[10] The ALJ further cited to two representation cases in which the Board declined to waive a contract bar as a result of a disclaimer. See East Manufacturing Corp., 242 N.L.R.B. 5, 6 (1979) (finding, in a representation matter, that a disclaimer of interest was ineffective during the term of a collective bargaining agreement and that collective bargaining agreement still constituted a contract bar when union was not defunct); Mack Trucks, Inc., 209 N.L.R.B. 1003, 1004 (1974) (finding, in a representation matter, that collective bargaining agreement constituted a bar to an election where incumbent union who disclaimed interest in unit after reaching an agreement

Even if Pinebrook was factually analogous to the case at hand, it was explicitly overruled by the Board in Production and Maintenance Union, Local 101, 329 N.L.R.B. 247, 248 (1999). In Production and Maintenance Union, Local 101, the Board noted that "a union may disclaim its role as a collective-bargaining representative and may do so even in apparent response to the employees' filing of a deauthorization petition or the loss of a deauthorization election" and that "a union may so inform employees without providing them with objective evidence that its continued representation of them would be infeasible."

A union may unequivocally and in good faith disclaim further interest in representing a bargaining unit. Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980). A union may disclaim its role in response to even extreme dissident activities including the filing of a deauthorization or decertification petitions. Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950). Here, at most, Sullivan's email can be construed as indicating UGSOA intended to disclaim interest in a portion of Local 217 because of a failure of the representative relationship due to PSOs repeated, unsubstantiated allegations. Contrary to the ALJ's findings, Sullivan did not unlawfully threaten to disclaim interest in a portion of Local 217B through her email to discourage Goins from engaging in protected activities on behalf of the IRS, SSA, and VA site PSOs. Rather, Sullivan lawfully communicated about a potential disclaimer of that portion of the unit due to failure of the

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with the petitioning union). Neither case provides guidance at to the legality of Sullivan's March email.

representative relationship as demonstrated by Goins' repeated unsubstantiated claims of large amounts of missing funds unsupported by any documentation.[11] A union may lawfully disclaim interest in representing employees where it can no longer effectively carry out its duties. See Production and Maintenance Union, Local 101, 329 N.L.R.B. 247, 248 (1999); Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950).

B. UGSOA Did Not Retaliate Against VA, IRS, And SSA PSOs By Reorganizing Local 217 In April of 2017 (Exceptions 4-5).

In April 2017, UGSOA created Local 217B and transferred the representation of the VA, SSA, and IRS sites from Local 217 to Local 217B. Contrary to the ALJ's findings, UGSOA reorganized Local 217 for legitimate, non-discriminatory purposes rather than for retaliatory reasons. (Exception 4).[12] UGSOA reorganized Local 217 only after receiving a series of vociferous complaints about the quality of representation provided by UGSOA to the VA, SSA, and IRS PSOs at a time when those PSOs were in a "virtual revolt." (ALJ Decision, at 27).

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[11] Goins repeatedly implied that UGSOA and its third-party administrators were stealing health and welfare funds, although it was clear that subcontractors had failed to ever make the requisite benefit payments and that UGSOA was working to recoup those amounts. (See Joint Exhibits 27, 28, 40, 45 and 54).

[12] Although apparently including the separation as a basis for his finding that UGSOA unlawfully disclaimed interest in the VA, SSA, and IRS PSOs, the ALJ noted that the General Counsel did not allege that the separation of the three sites was unlawful apparently recognizing the total breakdown in the representative relationship within Local 217 at that time. (ALJ Decision, at 27).

Prior to the reorganization, the record contains ample evidence of continuous, and routinely, baseless, criticism of UGSOA and its handling of the issues raised by the VA, SSA, and IRS sites as well as disharmony within Local 217. Simultaneously, the evidence reveals that UGSOA and its benefit administrators were diligently responding to inquiries and addressing the problems of the so-called dissidents no matter how hostile or accusatory the tone of those PSOs' inquiries. (See Joint Exhibits 26, 27, 28, 29, 30, and 40). Although, at UGSOA's request, BSI was actively conducting audits and pursuing missing funds that a subcontractor had failed to pay, Goins accused BSI, without evidence to the contrary, of being unable to account for a very significant amount of money. (Joint Exhibit 28). Like Goins, Markert sent similarly accusing emails to BSI regarding health and welfare funds contending that UGSOA's disregard was "disheartening and down right criminal," apparently without any evidence of criminal behavior, and received prompt responses detailing BSI's efforts to restore impacted PSOs' accounts. (Joint Exhibits 27 and 29).

Despite UGSOA's continuous efforts to resolve health and welfare problems culminating in BSI locating all missing funds and completing the reconciliation of the accounts as necessary, Frazier, Markert, Goins, and other PSOs at the VA, IRS, and SSA sites continued to criticize the quality of UGSOA's representation while making entirely unsubstantiated claims. In March of 2017, Goins contended that there was $150,000 of unaccounted funds missing from PSOs accounts as well as thousands of dollars in unpaid

medical expenses. (Joint Exhibits 30 and 54). By that point in time, BSI was in the processing of recovering only $23,000 of missing funds from a delinquent contractor. (Joint Exhibit 54). Frazier similarly contended that PSOs had uncovered medical bills ranging from $2,500 to $35,000. (Joint Exhibit 38). Likewise, Markert testified that PSOs were missing $100,000 as of the time Local 217 and Local 217B were separated although by May 25, 2017, BSI had recovered all funds and credited them to the PSOs accounts and was undertaking the process only of calculating gains and losses on the restored funds. (Joint Exhibit 43). Frazier, Markert, and Goins failed to provide any documentation of missing health and welfare contributions or of unpaid medical expenses to support their claims that UGSOA and BSI were improperly handling their funds. (Markert, 46-47; Goins, 90-91; Frazier, 65-67).

The record is also replete with evidence showing internal tensions within Local 217. In the Spring of 2017, Goins filed a complaint with DOL leveling a multitude of allegations against Local 217 including allegations regarding the conduct of the Local's election, Local 217's failure to provide an itemized expenditure report, Local 217's refusal to extend the collective bargaining agreement, Local 217's failure to respond to allegations of unauthorized spending, Local 217's failure to conduct a forensic audit, and Local 217's failure to retain a local attorney to assist with contract negotiations. (Joint Exhibit 33). In her communications, Markert asserted that the subcontracted PSOs represented themselves through the transition of subcontractors with "no assistance, guidance, or support from the Local." (Joint Exhibit 38). While

Markert, Goins, and Frazier were fairly disqualified from participating in the Spring of 2017 election pursuant to the Local 217 bylaws due to their failure to pay dues, they vehemently protested their exclusion sending a multitude of heated and accusatory emails.[13] (See Joint Exhibits 31, 34, and 38). For example, on May 3, 2017, Frazier accused Natale of sending communications full of lies, deceit, and indirect threats. (Joint Exhibit 38). PSO Martino Gedeus further contended that Natale had "no interest in fighting for officer's rights[.]" (Joint Exhibit 38).

Despite their baseless allegations and contrary to the ALJ's finding that UGSOA separated Local 217B to retaliate against PSOs for opposing the Union's leadership (see Exception 4), the evidence shows that UGSOA as well as its third party administrators, actively supported Frazier, Markert, and Goins in resolving ongoing problems and also in their participation in the administration of Local 217. For instance, Frazier served as a steward for Local 217 since 2015. (Frazier, 52-54). Similarly, Markert regularly attended union meetings, raising ongoing issues, and participated on the Local 217 bargaining committee. (Markert, 30, 36-37).

Further, Natale explained at hearing that by the Spring of 2017, he felt that the relationship between UGSOA and the Local 217 PSOs was "shattered" and he believed that UGSOA could not resolve issues to the satisfaction of its members. As noted by the ALJ, Natale credibly testified that UGSOA successfully split locals into separate groups in the past to keep the peace

[13] The DOL found no violation based on Local 217's exclusion of PSOs who were not in good standing from participating in the election. (Natale, 121).

between unit members was not disputed. (ALJ Decision, 17, n.36). Thus, the record evidence confirms that UGSOA undertook the separation in good faith to permit the Local 217B PSOs to have a greater role in their representation not to cease representing those PSOs.

Contrary to the ALJ's finding that UGSOA did nothing to alleviate problems encountered by the newly formed Local 217B membership and did nothing to help Local 217B membership get Local 217B up and running (Exception 5), UGSOA set the foundation to make Local 217B operational. In the letter advising PSOs of the creation of Local 217B on May 22, 2017, UGSOA notified the PSOs that CBA preparations, an election of a board of officers for Local 217, and the adoption of bylaws would follow. (Joint Exhibit 11). Natale explained the benefits of becoming a separate local to Goins who had served as a representative for the group. (Natale, 132; Goins, 93). Meanwhile, following the reorganization, Frazier continued to function as a shop steward for his site. (Frazier, 62). Further, following the separation, Natale had discussions with the Employer about the impacts of the separation. UGSOA requested that the terms of the existing collective bargaining agreement, with the exception of the recognition clause, be applied to both Local 217 and Local 217B until Local 217B could negotiate its own collective bargaining agreement. The Employer did, in fact, continue to apply the terms of the collective bargaining agreement to Local 217B as requested and raised no objection to the creation of Local 217B despite the scope of the recognition clause in the existing collective bargaining agreement. (Natale, 123, 134).

Before UGSOA could fully implement Local 217B, the Local 217B PSOs rejected continued representation by UGSOA and their inclusion within a separate bargaining unit as described infra. (See Joint Exhibits 44 and 45). Natale testified that no election for Local 217B officers was held because UGSOA had simply not gotten to that point in the process. Local 217B would have been treated like any other new local and Natale would have distributed a mailing for nominations and sample bylaws. Similarly, Local 217B had not begun negotiating a collective bargaining agreement because it had not elected officers. (Natale, 127).

Contrary to the ALJ's finding that UGSOA reorganized Local 217 to retaliate against dissident PSOs, UGSOA sought to separate Local 217 into two groups to alleviate growing hostility and salvage its broken representative relationship with the unsatisfied PSOs.[14] As shown above, a breakdown in the relationship between Respondents and the SSA, VA, and IRS site PSOs and internal dissatisfaction within Local 217 was preventing Respondents from functioning effectively as union representatives.

C. UGSOA Disclaimed Interest In Local 217B For Legitimate, Non-Discriminatory Reasons And, In Doing So, Did Not Violate Section 8(b)(1)(A) Of The Act (Exceptions 6 and 8).

While the ALJ found that UGSOA disclaimed interest in Local 217B to retaliate against certain PSOs for opposing the Union's leadership, the record

[14] Local 217B included approximately 82 PSOs while Local 217 had about 138 PSOs. (Joint Exhibits 55 and 56). Clearly, UGSOA did not create Local 217B, carving out nearly half of the PSOs from the existing Local 217, as a farce so that it could refuse to represent Goins, Markert, and Frazier.

shows that UGSOA ceased representing Local 217B for legitimate, non-discriminatory, reasons consistent with their obligations under the Act. (See Exception 8). Despite UGSOA's efforts to resolve internal issues and dissatisfaction within Local 217 through reorganization, UGSOA was ultimately unsuccessful due to the PSOs' rejection of Local 217B and UGSOA in its entirety. The creation of Local 217B failed to quell tensions between the SSA, VA, and IRS PSOs and UGSOA or renew confidence in UGSOA's representation abilities. Instead, the SSA, VA, and IRS PSOs responded by making further unsubstantiated and defamatory criminal allegations against UGSOA.

In reaching his conclusion that UGSOA engaged in unlawful retaliatory conduct, the ALJ erroneously described the factual circumstances surrounding UGSOA's disclaimer of interest. Contrary to the finding of the ALJ, Goins' sharp criticism on June 6, 2017 did not lead Sullivan to declare that UGSOA would disaffiliate from Local 217B after BSI looked into and advised her about Goins' latest charges (Exception 6). On June 6, 2017, Goins, who regularly acted as a de facto spokesperson for the SSA, VA, and IRS sites, did send the International a number of communications ultimately rejecting the creation of Local 217B and expressing a desire to leave UGSOA. Goins maintained that a majority of PSOs wished to disaffiliate from UGSOA stating, in part,

> The PSO's of the Local are no longer willing to tolerate your theft, your lies, your misrepresentation, your mismanagement of funds and your unfair union practices. The UGSOA is a pathetic disgrace built on totally lies. We want no more affiliation with this crooked, twisted, corrupt association you call an international[.]

(Joint Exhibit 45). At hearing, Goins admitted that he had no evidence that the Union was stealing health and welfare payments and acknowledged that he accused the union of corruption without any proof. Even after the International affirmed that Local 217B would be given its own board and conduct its own negotiations, Goins maintained that a "total disaffiliation" was necessary and that the PSOs did not wish to form Local 217B. (Joint Exhibit 45; see Joint Exhibit 44).

No evidence exists to suggest that Sullivan contacted BSI in response to Goins' June 6 email. Instead, Sullivan engaged in an exchange of emails with Goins. (Joint Exhibit 44 and 45). Indeed, Sullivan had no occasion to email BSI in response to Goins' emails. At that point in time, the health and welfare contribution issue was nearly resolved as had been conveyed on multiple occasions to the Local 217B PSOs. (Joint Exhibits 31, 34 and 38). Thus, the ALJ's factual findings surrounding the disclaimer of Local 217B are entirely erroneous and should be set aside.

As a result of the failed reorganization of Local 217, as described supra, UGSOA permissibly disclaimed interest in Local 217B, made up of the frequently subcontracted sites, for legitimate, non-discriminatory, purposes as a result of a total breakdown in the representative relationship. See Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980). Here, UGSOA clearly and unequivocally disclaimed interest in Local 217B for legitimate and non-discriminatory purposes and then took action consistent with ending its representation of the Local 217B PSOs.

At the time of the disclaimer, the numerous communications described supra demonstrate that UGSOA could no longer effectively represent the SSA, VA, and IRS site PSOs. The de facto representatives of those sites continued to make baseless complaints of corruption and criminal conduct against the International even while the International assisted them in resolving issues. Further, the SSA, VA, and IRS PSOs, through their de facto representatives, made clear that they no longer wished to be associated with UGSOA in any fashion. Rather than an attempt to discriminate against "dissident" PSOs, who UGSOA had continuously assisted, the evidence shows that UGSOA disclaimed Local 217B because the representative relationship had reached a breaking point with the impacted PSOs simultaneously rejecting UGSOA.

UGSOA's disclaimer of Local 217B is readily distinguishable from other instances in which the Board has concluded that a union has unlawfully ceased to represent employees. For instance in Skibeck, 345 N.L.R.B. 754 (2005), a union was alleged to have violated Section 8(b)(3) of the Act by refusing to bargain with the employer over employees within the unit employed in Ohio. The Board found that the union violated Section 8(b)(3) of the Act by effectuating a unilateral change in the scope of the bargaining unit by unilaterally asserting to the employer that it would no longer represent certain employees in the unit without the employer's consent following a jurisdictional dispute and arbitration award directing the union to cease representing employees in Ohio. Skibeck, 345 N.L.R.B. at 755. The NLRB explicitly declined to pass on the issue of whether the union also violated Section

8(b)(1)(A) or the Administrative Law Judge's finding that a disclaimer not co-extensive with the scope of the bargaining unit was ineffective because it was "equivocal." Skibeck, 345 N.L.R.B. at 755; cf Manitowac Shipping, 191 N.L.R.B. 786 (1971).[15]

In Lanier Brugh Corp., 339 N.L.R.B. 131 (2003) Pocatello drivers, employed by Lanier Brugh, were jointly represented in a system-wide unit by various locals and joint counsels known as the joint representative. The Board found that the joint representative violated Section 8(b)(1)(A) by refusing to represent the Pocatello drivers because they exercised their right under Idaho's right to work law to refrain from union membership. Unlike Lanier Brugh, UGSOA did not cease representing a small group of employees because those employees refused to become union members or because those members engaged in protected, concerted activities. Instead, here, Respondents disclaimed representation of three sites including approximately 80 PSOs when representatives from those sites indicated that they no longer desired to be connected with UGSOA and their dissatisfaction led to a breakdown in the representative relationship.

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[15] As discussed in greater detail infra, UGSOA's disclaimer should be held to be co-extensive with the scope of the bargaining unit. Although the parties did not alter the recognition clause of the Local 217 collective bargaining agreement, the Employer raised no objection to the alteration of the scope of the bargaining unit when UGSOA notified it of its reorganization. Even if the disclaimer were not coextensive with Local 217B, a union may disclaim interest in a severable portion of a bargaining unit. See Manitowac Shipping, 191 N.L.R.B. 786 (1971) (finding that Boilermakers Union effectively disclaimed interest over crane operators, in the face of a clarification petition filed by IBEW, where the crane operators classification was included in the Boilermakers Union's collective bargaining agreement).

While UGSOA received numerous complaints from Markert, Goins, Frazier, and other PSOs at the SSA, VA, and IRS sites, the evidence shows that UGSOA disclaimed interest in Local 217B not because PSOs were making complaints but because those complaints, as well as the PSOs repeated requests to end their association with UGSOA, were symptoms of UGSOA's inability to represent those PSOs to their satisfaction and a complete breakdown of the representative relationship. The evidence shows, as discussed in detail supra, that UGSOA routinely and continuously attempted to assist PSOs with the issues that formed the basis for their complaints and was not trying to curb PSOs' union activities.

Moreover, imposing a representative obligation upon a union that can no longer continue to represent a group of employees for other than financial reasons would appear contrary to the Board's existing precedent. See Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); American Sunroof, 243 N.L.R.B. 1128, 1128-29 (1979); Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950); Federal Shipbuilding & Drydock Co., 77 N.L.R.B. 463, 464 (1948). Pursuant to the ALJ's findings, a union could not disclaim interest in representing workers where those workers have repeatedly expressed a lack of confidence in the union, through actions up to and including making entirely unsubstantiated criminal allegations against the union, while, at the same time under existing Board precedent, a union could lawfully disclaim employees engaging in the protected action of filing a deauthorization or a decertification petition. See Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999). The evidence shows that

UGSOA disclaimed interest in the Local 217B PSOs because the representative relationship had been destroyed, just as in the case of the filing of a decertification petition, and UGSOA did not cease to represent those PSOs for any unlawful, retaliatory reasons.

Even if UGSOA were found to have disclaimed interest in Local 217B on April 26, 2017 when it voted to reorganize Local 217 and transfer representation of the IRS, SSA, and VA PSOs to Local 217B, ample evidence exists in the record showing that UGSOA reorganized the groups for a lawful purpose. As described in detail above, UGSOA reorganized the groups because the representative relationship between itself and the IRS, SSA, and VA PSOs had been destroyed not to simply retaliate against those PSOs for engaging in dissident activities. When the IRS, SSA, and VA PSOs subsequently rejected Local 217B as their representative, UGSOA ceased attempting to impose itself upon those PSOs and did not engage in any coercive action.

In Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980) affirming Grinnell Fire Protection Systems Company, Inc., 235 N.L.R.B. 1168 (1978), the Ninth Circuit affirmed that a local union, Local 598, did not violate Section 8(b)(1)(A) by transferring jurisdiction of the bargaining unit to another local, Local 986. Local 986 requested that the Joint Council transfer jurisdiction over a unit from Local 598 to Local 986 in connection with an effort to organize firefighters. The union did not ask members to consent to the transfer. A member of the unit, Dycus, was then declared ineligible to participate in a Local 598 election because he was no longer a member of the union. The Ninth Circuit found

substantial evidence to support the Board's conclusion that the transfer was approved in accordance with union regulations and was motivated by legitimate business considerations, rather than to suppress Dycus' dissident activities, commenting, in part,

> Where there is an attempt to substitute a new employee representative for the existing certified representative without an election or continuity of representation, a question of representation exists, and the Board will not amend the certification of the bargaining agent, nor will it compel an employer to bargain with the new employee representative. We find no support, however, for the proposition that the attempt to substitute a new employee representative constitutes an unfair labor practice in the absence of coercive conduct aimed at compelling an employee to accept the new representative. The Board held otherwise in this case, and we agree.
> In sum, the attempted transfer of representation reflected a legitimate union interest, contravened no national labor policy, and was effected in a noncoercive manner. Therefore, the Board properly concluded that the decision to transfer was an internal union matter protected by the proviso to section 8(b)(1)(A).

Dycus, 615 F.2d at 826 (internal citations omitted). In its opinion, the Ninth Circuit did not address whether Local 986 ever became Dycus' exclusive bargaining representative. Dycus, 615 F.2d at 827. In its underlying decision, the Board noted that Local 986 also disclaimed interest in representing Dycus where it became clear that Dycus did not want to be represented by Local 986 finding no violation of the Act:

> Depriving the unit of the benefits of the collective-bargaining agreement by withdrawing as representative can be coercive as a matter of law only if the unit has a continuing right to those benefits. And if the unit has that right it can only be because a collective-bargaining representative has that duty. Without that duty, the proposition that Dycus was coerced by the incumbent's withdrawal evaporates: he would be no more coerced than any employee electing whether to be represented by a particular labor organization or not to be represented at all. Withdrawal is not a

> breach of the duty of fair representation. For that duty is the corollary to an exclusive representative's power and authority. The representative having disclaimed that power and authority, the predicate for the duty fails. Therefore, there was no coercion. Without that "coercion," the attempted transfer may be seen for what it is, an internal union matter.

Grinnell Fire Protection Systems Company, Inc., 235 N.L.R.B. 1168, 1169 (1978). See SEIU Local 250, 30 NLRB Advice Mem. Rep. 40028 (Advice Memorandum 2002) (concluding that union effectively disclaimed interest where its conduct revealed an intention to transfer representational status to SEIU Locals where union entered into service agreements delegating all collective bargaining and grievance adjustment duties to SEIU indemnifying the union for breaches committed by SEIU, and then left all aspects of grievance adjustment and collective bargaining to SEIU and further concluding that union disclaimed interest for a lawful reason to combine resources with SEIU and augment efforts to organize workers noting that, absent coercion, a transfer of jurisdiction between two unions over particular represented union members is a privileged internal union matter and does not, alone, violate Section 8(b)(1)(A)).

Here, as in Dycus, UGSOA transferred representation of the IRS, VA, and SSA PSOs from Local 217 to Local 217B for legitimate reasons. When the IRS, VA, and SSA PSOs rejected the representation of Local 217B, UGSOA did not undertake any coercive action and, instead, permitted those PSOs to reject the transfer of representation. Thus, even if the reorganization of Local 217 could be construed as a disclaimer of the Local 217B sites, Respondents did not engage in any sort of unlawful conduct with respect to the Local 217B PSOs.

Indeed, it is established that a union may disclaim interest in a severable portion of a bargaining unit. See Manitowac Shipping, 191 N.L.R.B. 786 (1971) (finding that Boilermakers Union effectively disclaimed interest over crane operators, in the face of a clarification petition filed by IBEW, where the crane operators classification was included in the Boilermakers Union's collective bargaining agreement); Southern California Printing Specialties District Council 2, 1983 WL 29348 (Advice Memorandum 1983) (concluding that union did not violate Section 8(b)(1)(A) by disclaiming interest in representing a portion of its bargaining unit where union determined that it no longer wished to do the employer the favor of representing employees in one unit so that the employer did not have to deal with two unions noting that as a general rule unions may effectively disclaim interest in a bargaining unit or severable portion thereof even during the term of a collective bargaining agreement and absent some arbitrary or invidious reasons for a decision to disclaim, there was nothing to suggest that a union had an obligation to claim representational rights).

In challenging the reorganization of Local 217 and subsequent disclaimer of Local 217B, no allegations exist contending that UGSOA unlawfully altered the scope of its bargaining unit.[16] "It is clear that, by mutual consent, parties can voluntarily change the scope of a bargaining unit, if the new unit is not obviously improper." Steinmetz Electrical, 234 N.L.R.B. 633 (1978) (dismissing

[16] The ALJ's decision contained no finding that Respondents violated Section 8(b)(3) of the Act by either unilaterally altering the scope of the unit or by unlawfully refusing to bargain. That is so because the Employer never objected to the change and, in fact, accepted it by action.

allegation that union violated Section 8(b)(3) where, after an employer's withdrawal from association conducting bargaining on its behalf the union refused to negotiate a commercial agreement with the employer association but bargained to agreement on a residential agreement and then formally and unequivocally disclaimed any and all interest in representing employees performing commercial work where the parties thereby mutually agreed to the establishment of a new unit of residential employees which was an appropriate unit and not obviously improper, even where the unit previously consisted of both residential and commercial employees).

Here, the evidence shows that the Employer did not object to the reorganization of Local 217 to include both Local 217 and Local 217B or to the subsequent disclaimer of Local 217B.[17] Notably, the Employer did not file any unfair labor practice charges against Respondents as a result of either the reorganization or disclaimer of Local 217B. While UGSOA and the Employer did not explicitly modify the recognition clause in the agreement, the evidence shows that the Employer engaged Local 217B in discussions regarding the effects of the disclaimer and then, thereafter, enrolled PSOs in benefits through the Employer directly. The Employer also sent out a memorandum indicating that SSA, VA, and IRS site PSOs could not be assigned to other buildings and vice versa. (See Joint Exhibits 25, 52, and 53). The Employer's actions show

[17] That Triple Canopy, a successor contractor, took a contrary position in a subsequent representation hearing (see Joint Exhibit 7) does not show that Allied ever objected to the new representational arrangement.

that the parties accepted the modification of the Local 217 bargaining unit and subsequent disclaimer of the Local 217B PSOs.

Further, Local 217B, comprised of three sites, routinely subcontracted by the Employer, does not constitute an obviously improper bargaining unit even if a larger unit included those sites would also be an appropriate unit. The three distinct worksites comprising Local 217B constituted an identifiable portion of the bargaining unit and was not just a random collection of PSOs. Indeed, the sites forming Local 217B were routinely subcontracted by the Employer giving them distinct concerns from the remaining Local 217B sites. The parties had even previously agreed to alter the scope of the certified bargaining unit even prior to the 2017 reorganization of Local 217B. (Compare Joint Exhibit 1 with Joint Exhibit 6). Respondents alteration of the scope of the Local 217 bargaining unit, with the implicit consent of the Employer, fails to show that it engaged in any conduct violative of Section 8(b)(1)(A) and UGSOA could lawfully disclaim representation of the IRS, SSA, and VA PSOs.

IV. CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Board grant its exceptions and reverse the ALJ's finding that Respondents violated Section 8(b)(1)(A) by threatening to disaffiliate from employees assigned

to the VA, SSA, and IRS sites and by then disclaiming interest in Local 217B.

Respectfully submitted,

On behalf of the United Government Security Officers of America International and its Local 217,

By its attorneys,

/s/Kristen A. Barnes

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Date: February 19, 2019

CERTIFICATE OF SERVICE

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing Exceptions To The Decision Of The Administrative Law Judge On Behalf Of The United Government Security Officers of America And Its Local 217 and Brief In Support Of Exceptions To The Decision Of The Administrative Law Judge On Behalf Of The United Government Security Officers of America And Its Local 217 upon Christy E. Bergstresser Blumert, Esq., [Christy.Bergstresser@nlrb.gov] Field Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, and Charging Party Albert Frazier [reemstyle32@gmail.com].

Dated: February 19, 2019

/s/Kristen A. Barnes
Kristen A. Barnes